SPECIAL ADVISORY COMMITTEE
ON
ETHICAL ISSUES IN HEALTH CARE

POSITION PAPER ON ABORTION

MAY, 1988

POSITION ON ABORTION

SPECIAL PANEL ON ETHICAL ISSUES IN HEALTH CARE

Introduction

In the summer of 1987, the Honourable Peter A. Dueck, Minister of Health, established a Special Panel on Ethical Issues in Health Care. Among the many issues that required consideration was the issue of abortion. This report reflects the deliberations of the Special Panel and presents a number of recommendations which, it is hoped, will assist the Government in its consideration of abortion as an important social policy issue.

Background

Up until January, 1988, the procedure of abortion was governed by the provisions of Section 251 of the Criminal Code of Canada. However, even with such provisions, the issue of abortion still generated polarized viewpoints from many sectors of our society. This was evidenced by the emergence of "single issue" boards, widely varying opinions on what constituted "significant risk to the life or health of the mother," controversy around what should be considered reasonable abortion rates in British Columbia and differences on what constituted reasonable access to abortion.

However, the Supreme Court decision in January, 1988, ruled that the existing law with respect to abortion was unconstitutional and, hence, no longer valid. The Province, in the absence of a national policy, decided that abortion would only be funded if the life of the woman was in jeopardy. This position, however, was struck down by British Columbia's courts in March, 1988.

In view of the above, and in the absence of policy direction from the Federal Government, the Special Panel on Ethical Issues was requested to: (a) present a rational discussion of abortion which could improve our understanding of this complex issue and (b) present broad policy directions which could be acceptable to significant portions of our society.

Discussion

Abortion is not a simple matter--it is not "right to life" versus "right to choose." Rather, abortion is a very complex issue involving many different parameters. The analysis of those parameters assists us in forming a framework by which to review abortion in a rational manner.

Before arriving at its conclusions and recommendations, the Special Panel on Ethical Issues in Health Care considered the following:

- **Under What Circumstances is a Human Organism a Person?**

  The Committee attempted to develop an ethical position by reflecting on historical, scientific and religious considerations. On the basis of these, the Committee agreed that there is a fundamental difference between a human organism and a person, and that personhood is attained at some stage of fetal development.

- **Rights of Women**

  The Committee agreed that our society has shown increasing concern for women's rights and an increasing respect for women as moral decision makers. These factors cannot be ignored in the discussion on abortion.

- **Womens' Rights and Rights of the Fetus**

  There was general agreement that, at the very early stages of pregnancy, the rights of the woman were dominant. There was also general agreement that the rights of the fetus were closely linked to the developmental stages of the fetus and that the rights of the fetus increase throughout the pregnancy.

- **Presence of Brain Activity**

  The Committee agreed that the capacity for brain activity should be an important factor in determining the rights of the fetus. The loss of capacity for brain activity is a criterion for brain death and, therefore, by corollary, the capacity for brain activity could be considered as a characteristic of being a person. It was generally agreed that a fetal brain begins to acquire that capacity at around 8-12 weeks gestation, and with full capacity reached at some time around 20 weeks.

- **Viability**

  The concept of viability is becoming a less important criterion for determining the limits of abortion. It is not related to the concept of personhood; viability is often a function of whatever resources and effort society is willing to invest and finally, the limits of viability are being steadily extended.

- **Safety to the Woman**

  From a health standpoint, abortion is a very safe procedure when performed in the first 12 weeks of gestation--in fact, there are fewer risks associated with abortion (in this time frame) than with carrying the fetus to term. Such abortions can be carried out safely in hospitals or in appropriate outpatient facilities.

- **Failure of Restrictive Laws**

  A review of the literature found that restrictive laws have failed to reduce the number of abortions in any society where data is available and, indeed, have simply produced more criminal abortions with a greater threat to the life of the woman. In addition, restrictive laws and processes which lead to unnecessary delays in the implementation of the required procedure increase the risk to the woman.

- **Administrative Fairness and Fundamental Rights and Freedoms**

  Any policies with respect to abortion should be viewed in the context of other medical procedures of comparable severity. Issues such as access and funding should be viewed within this context.

The Special Panel discussed all of the above issues in considerable depth and, as a result of these discussions is presenting the following recommendations:

Recommendations

The Special Panel on Ethical Issues in Health Care was able to reach concensus in making the following recommendations:

1. Abortion on demand is not supported.

2. Up to 12 Weeks gestation, evaluation of health factors between the woman and her physician shall be considered sufficient grounds for an abortion.

3. Between 12 and 20 Weeks - Because of the emerging rights of the fetus, and the increasing risks to the woman, abortion should be considered only where it is justifiable for reasons of risks to health. The health risks should be of such gravity that a competent physician has doubts about the probability of seeing the woman safely through to term because of maternal-fetal indications. The Committee suggests that current standard medical procedure recognizes the need for a second medical opinion under these conditions.

4. After 20 Weeks - The Committee agreed that, after 20 weeks, abortion as it is normally defined, does not exist. After 20 weeks, it is considered as premature delivery up until term and should be dealt with as such. The rights of the fetus have been clearly established by practice during obstetrical complications. After 20 weeks, the Committee was satisfied that existing medical practice adequately considered the rights of both the fetus and the woman.

5. Abortion funding - Abortions should be treated as are other procedures of comparable severity. Hospital and medical costs related to abortions should be publicly funded.

6. Reasonable Access - The women of this Province should have reasonable access to abortion.

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